

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LIVINGSTON WALKER and LINDA WALKER, X CV-07 7089 (PKL)

Plaintiffs,

**VERIFIED ANSWER**

**Honorable Judge Peter K. Leisure**

-against-

LC MAIN, LLC, ROGER & SONS CONCRETE, INC.  
and "JOHN DOE" (name is fictitious and intended to be  
an employee of ROGER & SONS CONCRETE, INC.),

Defendants.

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Defendants, LC MAIN, LLC and ROGER & SONS CONCRETE, INC. (hereinafter  
"DEFENDANTS"), by their attorneys, Harrington, Ocko & Monk, LLP, as and for their Answer  
to Plaintiffs' Complaint, allege as follows:

1. Deny having knowledge or information sufficient to form a belief as to the  
allegations contained in paragraphs designated "1", "2", "9" and "10".
2. Admit the allegations contained in paragraphs designated "3" and "6".
3. Deny the allegations contained in paragraphs "4", "5", "7" and "8".
4. Deny the allegations contained in paragraph "11" and respectfully refer all  
questions of law to the Honorable Justice presiding at the trial of this lawsuit.

**AS AND FOR THEIR ANSWER TO THE FIRST CLAIM  
FOR RELIEF ON BEHALF OF PLAINTIFF LIVINGSTON WALKER  
AGAINST THE DEFENDANT**

5. Admit the allegations contained in paragraphs designated "12" and "21".

6. Deny the allegations contained in paragraphs designated “13”, “14”, “18”, “22”, “23”, “24”, “25” and “26” in the form alleged and respectfully refers all questions of law to the Honorable Justice presiding at the trial of this lawsuit.

7. Deny the allegations contained in paragraphs “15”, “16”, “17”, “27”, “29”, “30”, “31”, and “32”.

8. Deny having knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated “19”, “20” and “28”.

**AS AND FOR THEIR ANSWER TO THE SECOND CLAIM  
FOR RELIEF ON BEHALF OF PLAINTIFF LIVINGSTON WALKER  
AGAINST THE DEFENDANT**

9. In response to the allegations contained in paragraphs “1” through “32” of the Complaint, Defendants repeat, reallege and refer each and every response to each and every allegation contained in paragraphs 1-32 of the Complaint as if fully set forth herein.

10. Deny the allegations contained in paragraphs designated “34”, “35”, “36”, “37”, “38”, “39”, and “40”.

**AS AND FOR THEIR ANSWER TO THE THIRD CLAIM  
FOR RELIEF ON BEHALF OF PLAINTIFF LIVINGSTON WALKER  
AGAINST THE DEFENDANT**

11. In response to the allegations contained in paragraphs “1” through “32” and paragraphs “34” through “40” of the Complaint, Defendants repeat, reallege and refer each and every response to each and every allegation contained in paragraphs 1-40 of the Complaint as if fully set forth herein.

12. Deny the allegations contained in paragraphs “42”, “43” and “44” and respectfully refer all questions of law to the Honorable Justice presiding at the trial of this lawsuit.

**AS AND FOR THEIR ANSWER TO THE FOURTH CLAIM  
FOR RELIEF ON BEHALF OF PLAINTIFF LIVINGSTON WALKER  
AGAINST THE DEFENDANT**

13. In response to the allegations contained in paragraphs “1” through “32”, paragraphs “34” through “40” and paragraphs “42” through “44” of the Complaint, Defendants repeat, reallege and refer each and every response to each and every allegation contained in paragraphs 1-44 of the Complaint as if fully set forth herein.

14. Deny the allegations contained in paragraphs “46”, “47” and “48” ” and respectfully refer all questions of law to the Honorable Justice presiding at the trial of this lawsuit.

**AS AND FOR THEIR ANSWER TO THE FIFTH CLAIM  
FOR RELIEF ON BEHALF OF PLAINTIFF LIVINGSTON WALKER  
AGAINST THE DEFENDANT**

15. In response to the allegations contained in paragraphs “1” through “32”, paragraphs “34” through “40”, paragraphs “42” through “44” and paragraphs “46” through “48” of the Complaint, Defendants repeat, reallege and refer each and every response to each and every allegation contained in paragraphs 1-48 of the Complaint as if fully set forth herein.

16. Deny having knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated “50”.

17. Deny the allegations contained in paragraphs “51” and “52”.

**AS AND FOR A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

18. That any liability of these answering Defendants is limited by the provisions of Article 16 of the CPLR and applicable Rules of the Federal Rules of Civil Procedure and these answering Defendants are not jointly or severally liable.

**AS AND FOR A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

19. That the damages allegedly suffered by the plaintiffs were caused in whole or in part by the culpable conduct of the plaintiffs. The plaintiffs' claim is therefore barred or diminished in the proportion that such culpable conduct of the plaintiffs' bears to the total culpable conduct causing the damages.

**AS AND FOR A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

20. In the event plaintiffs recover a verdict or judgment against these answering Defendants, said verdict or judgment must be reduced pursuant to CPLR 4545(c) and applicable Rules of the Federal Rules of Civil Procedure, by those amounts which have or will replace or indemnify plaintiffs in whole or in part for any past or future claimed economic loss or from any collateral source such as insurance, social security, workers' compensation or employee benefit programs.



**AS AND FOR A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

21. That all causes of action as alleged in the plaintiffs' complaint, fail to properly state, specify or allege a cause of action upon which relief can be granted, as a matter of law, against these answering Defendants.

**AS AND FOR A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

22. The injuries and damages alleged in the plaintiffs' Complaint were caused or contributed to by the plaintiffs' culpable conduct in assuming the risk under the conditions and circumstance existing.

**AS AND FOR SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

23. Plaintiffs failed to mitigate any damages they incurred and instead exacerbated damages due to plaintiffs' own acts and omissions.

**AS AND FOR A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

24. That the plaintiffs have failed to join and/or name a necessary party to this action, and as such, these answering Defendants will be inequitably affected by a judgment against them and this action may not proceed.

**WHEREFORE**, Defendants, LC MAIN, LLC and ROGER & SONS CONCRETE, INC., demand judgment dismissing the plaintiffs' complaint against them, together with the costs and disbursements of this action, and for any expenses incurred by them in the defense thereof, including attorneys' fees actually expended.

Dated: White Plains, New York  
October 5, 2007

/s/ I. Paul Howansky

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I. PAUL HOWANSKY, ESQ. [IH-7250]  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
LIVINGSTON WALKER and LINDA WALKER, X CV-07 7089 (PKL)

Plaintiffs,

VERIFICATION

Honorable Judge Peter K. Leisure

-against-

LC MAIN, LLC, ROGER & SONS CONCRETE, INC.  
and "JOHN DOE" (name is fictitious and intended to be  
an employee of ROGER & SONS CONCRETE, INC.),

Defendants.

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I, PAUL HOWANSKY, an attorney duly licensed to practice law before the Courts of the  
State of New York, affirms the following to be true under penalty of perjury:

I am the attorney for defendant, LC MAIN, LLC and ROGER & SONS  
CONCRETE, INC., and am fully familiar with the facts of said action, the source of my  
information being the file that I maintain in my office. I have read the foregoing Answer to  
plaintiffs' Complaint, and know the contents thereof, and I believe same to be true of my own  
knowledge, except as to those matters therein stated to be alleged upon information and belief,  
and as to those matters, I believe it to be true.

Dated: White Plains, New York  
October 5, 2007

/s/ I. Paul Howansky

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I. PAUL HOWANSKY, ESQ. [IH-7250]